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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,183	10/03/2006	Rainer Bader	T55120002	7462
27367 7590 07/07/2011 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402				
EXAMINER				
SCHILLINGER, ANN M				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
07/07/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,183

Applicant(s)

BADER ET AL.

Examiner

ANN SCHILLINGER

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,7,9-12 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7,9-12 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7, and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Otto et al. (US Pat. No. 6,290,727). Otto et al. discloses the following of claim 1: an acetabular liner for receiving a femoral head fixed on a stem component comprising: an outer surface (4); an inner surface (2) being concave and forming a cavity (col. 3, lines 38-45) adapted to receive the femoral head; and a rim surface (3) located circumferentially along the top edge of the liner and joining upper edges of the inner and outer surfaces (Fig. 3), the rim surface having at least one elevated portion (10) with first or second transitional areas (21) at each end and at least one non-elevated portion (Figs. 2-3), the transitional areas connecting a top surface of the elevated portion and the non-elevated portion of the rim surface, wherein at least a portion of the transitional areas is concave for allowing an increased range of motion of the stem component relative to the acetabular liner (Fig. 3), the elevated portion is a peak (18) in at least a portion of the rim surface, wherein the portion of the elevated portion is approximately 1/3 or less of the circumferential surface of the rim (Figs. 2-3).

Otto et al. discloses the following of claim 2: the acetabular liner according to claim 1 wherein the elevated portion forms approximately one third or less of the circumferential rim surface (Fig. 3).

Otto et al. discloses the following of aim 3: an acetabular liner for receiving a femoral head fixed on a stem component comprising: an outer surface (4); an inner surface (2) being concave and forming a cavity (col. 3, lines 38-45) adapted to receive the femoral head of the stem component; and a rim surface (3) located circumferentially along the top edge of the liner and joining upper edges of the inner and outer surfaces, the rim surface having at least one elevated portion (10) and at least one non-elevated portion (Figs. 2-3), the elevated portion having a concave inner surface (Fig. 3) that is a continuation of the inner surface of the cavity of the liner for containing the femoral head of the stem component in a snap fit (col. 1, lines 31-40) wherein the non-elevated portion of the rim surface has a beveled surface, wherein the beveled surface of the non-elevated portion is so formed that a snap fit between the femoral head and the liner is provided over the entire circumference of the cavity of the liner (Fig. 3), the elevated portion is a peak (18) in at least a portion of the rim surface, wherein the portion of the elevated portion is approximately 1/3 or less of circumferential surface of the rim (Figs. 2-3).

Otto et al. discloses claims 5 and 9 as shown in Figures 2-3.

Otto et al. discloses the following of claim 7: the acetabular liner according to claim 6, wherein the non-elevated portion of the rim surface is so beveled to extend approximately to the hemisphere of the cavity such that, when the stem component is moved to an extreme position, a femoral neck of the stem component first contacts an inner edge of the beveled surface and then contacts the entire beveled surface (Fig. 2; col. 4, lines 30-46).

Otto et al. discloses the following of claim 10: the acetabular liner according to claim 1, wherein the shape of the transitional area corresponds to the cross-sectional shape of a neck attached to the femoral head of the stem component (Figs. 1, 3).

Otto et al. discloses the following of claim 11: the acetabular liner according to claim 1, wherein the transitional area is curved with a radius of curvature, the radius of curvature being greater than the radius of a neck attached to the femoral head of the stem component (Figs. 1, 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

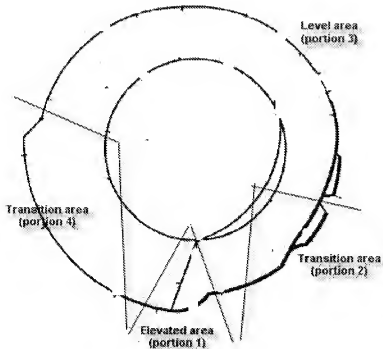
Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otto et al. in view of Thongpreda et al. (US Pat. No. 5,314,491). Otto et al. discloses the invention substantially as claimed, however, Otto et al. does not teach including an acetabular cup component with attachment means. Thongpreda et al. teaches a prosthetic hip implant with a cup component, liner, and means for attachment between the two in columns 7 and 8 for the purpose of providing the femoral head with a smooth and wear-resistant surface to move against. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an acetabular cup and attachment means to the device of Otto et al. in order to provide the femoral head with a smooth and wear-resistant surface to move against.

Response to Arguments

The claim objections are withdrawn in view of the amendments submitted 9/14/2010. Please note that claim 7, as submitted on 9/14/2010, should be listed as "currently amended," where the phrase "claim 1" replaced "claim 6."

Applicant's arguments filed 9/14/2010 have been fully considered but they are not persuasive. The Applicant contends that the Otto et al. reference lack two transitional areas. The examiner respectfully disagrees. Please note that the newly submitted claim language requires that the device only have one transitional area, as the language states that the elevated portion has first *or* second transitional areas. Further, as shown below, Otto et al. discloses two transitional areas on either side of the peak that connect the elevated portion to the lower portions. Please see the figures below for further clarification. Otto et al. further shows that at least a portion of the transitional area is concave as shown in Figure 3.

Further, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant's arguments regarding the surface area of the peak relative to the rim have been considered, but these features are not limitations in the claims.



Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/THOMAS J SWEET/
Supervisory Patent Examiner, Art Unit
3738

/A. S./
Examiner, Art Unit 3774